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From: SECSTATE WASHDC

Subject: Update to 9 FAM 302.8 Public Charge - INA 212(A)(4)

2. Guidance at 9 FAM 302.8 has been updated and reorganized.

3. INA 212(a)(4)(B) continues to provide that officers must take into account the totality of the alien's circumstances at the time of visa application, including, at a minimum: (a) age, (b) health, (c) family status, (d) assets, resources, financial status, and (e) education and skills. As revised, 9 FAM 302.8-2(B)(2) now includes detailed guidance to help officers assess these statutory factors when considering the totality of the applicant's circumstances. For instance, 9 FAM 302.8-2(B)(2)(f)(1)(b)(i) provides that an officer may consider "past or current receipt of public assistance of any type" in determining whether an applicant is likely to become a public charge, although officers must make a determination based on the present circumstances. Consequently, an applicant's current receipt of public assistance may not raise significant future concerns, based on the totality of circumstances. For example, if the applicant just completed an educational degree and received a credible job offer, the applicant's education and skills might provide a sufficient basis to find that the applicant overcomes any public charge ineligibility concerns in spite of current lack of assets. Alternatively, an applicant's past receipt of public assistance could be very significant: for example, if the applicant's spouse was the family's primary income earner, but recently died. In this case, the applicant's recent change in family status and likely change in financial status would weigh heavily in considering the totality of the circumstances.

4. Additionally, 9 FAM 302.8-2(B)(3), paragraph b, as revised provides that a "properly filed and sufficient, non-fraudulent" Affidavit of Support by itself may not satisfy the INA 212(a)(4) public charge requirement. The Affidavit of Support requirement at INA 213A and the public charge ineligibility at INA 212(a)(4) are distinct requirements which, where both are applicable, must both be satisfied. Accordingly, a properly filed and sufficient Affidavit of Support is essential, but does not preclude denial on public charge grounds. Officers should consider such affidavits as one factor in the totality of the applicant's circumstances, and, may find the applicant is likely to become a public charge if, for example, the applicant is in very poor health, is unable to work, and is likely to incur significant medical costs. Similarly, if an applicant does not clearly overcome public charge concerns but could with a joint sponsor, then a consular officer's evaluation of the likelihood the joint sponsor would voluntarily meet his or her financial obligations toward the applicant becomes vital to the adjudication. See 9 FAM 302.8-2(B)(3)(b)(1)(b).

5. The updated guidance at 9 FAM 302.8 is effective immediately.